

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 18496 of 2007(B)

**CMA.83/2006 of DISTRICT COURT, THODUPUZHA
OS.241/2006 of MUNI-MAGI.COURT,THODUPUZHA
(IA 1111/2006)**
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PETITIONERS:

**1. STEPHEN, S/O.KORAH, ENCHANATTIL HOUSE,
EDAPPALLY, MUTTOM.**

2. LOUCY, W/O. STEPHEN, -DO-,-DO-.

**BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.**

RESPONDENTS:

**1. DONY, S/O. GEORGE, KUZHIPILLIL HOUSE,
P.O.NEYYASSERY, KARIMANNUR.**

2. GEORGE, S/O.JOSEPH, -DO-,-DO-.

BY ADV. SRI. KRISHNANUNNI.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

- EXT. P1 TRUE COPY OF THE PLAINT IN O.S.241/06 BY THE
PETITIONERS DTD.18.8.06.**
- EXT.P2 TRUE COPY OF THE AGREEMENT DTD.7.3.06.**
- EXT.P3 TRUE COPY OF THE AFFIDAVIT AND PETITION FOR
INJUNCTION FILED BY THE PETITIONER DTD.18.8.06.**
- EXT.P4 TRUE COPY OF THE ORDER DTD.8.12.06 IN I.A.1111/06 IN
O.S.241/06.**
- EXT.P5 TRUE COPY THE JUDGMENT DTD.23.5.07 IN CMA 83/06
DISTRICT COURT, THODUPUZHA.**

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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Dated this the 22nd day of June, 2007.

J U D G M E N T

This writ petition is filed challenging the orders of the Munsiff Court, Thodupuzha and the District Judge, Thodupuzha. The brief facts necessary for the disposal of the writ petition are stated as follows:

2. The plaintiffs have filed the suit for a permanent injunction to restrain the defendants from trespassing upon the plaint schedule property or tapping the rubber trees or collecting any usufructs from the plaint schedule property or committing any act of waste.

3. As per the plaint averments there was an agreement to sell two acres of property which is the plaint schedule for a consideration of 12.75 lakhs and the defendants has to assign 7.25 cents of property besides the above mentioned consideration. The document is produced and as per the terms of the agreement it is seen that 6.75 lakhs had been paid by the defendants to the plaintiffs and

they have also transferred 7.25 cents by virtue of a registered instrument in favour of the plaintiffs. The endorsement in the document also reveals that the defendants had been put into possession of the property and they are permitted to enjoy the usufructs from the property. According to the defendants, when it is so, it has come out that a suit has been filed by the Devaswom against the present plaintiffs for recovery of possession of the property as O.S.241/06 and it is pending before the Court. It is averred by them that the said fact has been suppressed and therefore not in a position to further proceed with the transaction and purchase of the property. They had instituted a suit before the Sub Judge's Court, Thodupuzha as O.S.62/06 for realisation of the advance amount as well as for the property which they had assigned in favour of the plaintiffs. The agreement which is produced before the Court would reveal that the defendants had been put into possession of property as per the terms of the agreement.

Even u/s 49 of the Registration Act a document which is to be registered, though not registered, especially, an agreement to sell, can be looked into as well as it can also be used for collateral purposes. Even the averments in the plaint indirectly indicate that possession is given to the defendants because the word used is that the defendants are permitted to tap rubber trees. So, as the possessory aspect is confirmed there is no point in further looking into the matter at this stage and the courts below correctly held that the plaintiffs are not entitled to the injunction prayed for. So, I do not find any ground to interfere with the decision of the Court below and therefore the writ petition stands dismissed.

4. Taking into consideration the nature of the case and after hearing the counsel on both sides I feel this is a matter which can be settled and the Court below where this suit is pending shall make an earnest endeavour to settle the matter if the parties co-operate so that the subject matter in

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this case as well as that of O.S.62/06 can be amicably settled by the parties. The learned Advocates are also directed to render necessary help and assistance in arriving at a settlement.

M.N. KRISHNAN, JUDGE.

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